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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of his office in the Plurinational State of Bolivia* **

Summary

This report presents an overview of the human rights situation in the Plurinational State of Bolivia and the work of the Office of the United Nations High Commissioner for Human Rights office in Bolivia (OHCHR-Bolivia) in 2014.

President Evo Morales Ayma was re-elected in the October 2014 general elections. As a result of the elections, the Plurinational Legislative Assembly will have equal male and female representation.

Income redistribution programmes have registered progress in the enjoyment of economic, social and cultural rights and in the fight against extreme poverty. Food insecurity fell from 38 per cent to 19.5 per cent.

The High Commissioner is concerned about the number of femicides, the length of the related investigations and the low number of convictions. The adoption in 2013 of Comprehensive Law 348 guaranteeing women a life free from violence, and the publication of the corresponding regulation in October 2014, constitute an important step forward in the struggle against gender-based violence.

* The summary of the present report is circulated in all the official languages. The report itself, which is annexed to the summary, is being issued in English and Spanish only.

** The present document is submitted late in order to reflect the most recent information.

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The High Commissioner welcomes the initiative taken in October by female judges of the judicial branch and the Constitutional Court to present a draft policy on gender equality in judicial institutions.

President Morales presented a bill to the Legislative Assembly on free, prior and informed consultation, which is still under debate.

The main structural problems facing the administration of justice mentioned in previous reports persist and have become worse. The High Commissioner hopes that the establishment of the National Council for Strategic Development of the Bolivian Justice System will be the first step towards effective judicial reform.

The emblematic cases cited in the present report exemplify the delays in the delivery of justice, resulting in impunity. OHCHR remains concerned at the high level of pretrial detention (82.09 % of prisoners), despite short- and medium-term measures taken to combat it.

Also of concern to the High Commissioner are developments affecting human rights defenders and civil society organizations. OHCHR-Bolivia has received reports of delays in the granting of legal status to some non-governmental organizations.

Finally, this report refers to the activities carried out by OHCHR-Bolivia and includes 10 recommendations by the High Commissioner.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of his office in the Plurinational State of Bolivia

Contents

		Paragraphs	*Page*
I.	Introduction	1	4
II.	National context	2–6	4
III.	Human rights situation	7–79	5
	A. Economic, social and cultural rights	7–20	5
	B. Women's rights	21–28	7
	C. Indigenous peoples' rights	29–36	8
	D. Racism and other forms of discrimination	37–40	10
	E. Administration of justice and the fight against impunity	41–53	10
	F. Emblematic cases	54–64	13
	G. Right to life and physical integrity	65–66	15
	H. Right to personal liberty, and the prison system	67–71	15
	I. The rights of victims of unconstitutional regimes	72	16
	J. Human rights defenders and freedom of expression	73–76	16
	K. Rights of children and adolescents	77–79	17
IV.	Main activities of the office	80–91	17
V.	Recommendations	92	18

I. Introduction

1. In February 2007, at the invitation of the Government of Bolivia, the Office of the United Nations High Commissioner for Human Rights (OHCHR) signed an agreement to set up an office in that country (OHCHR-Bolivia) with a mandate to monitor and report on the situation of human rights and to provide public institutions and civil society organizations with technical assistance. The agreement was approved by Congress on 13 July 2007 and renewed for a second period up to 21 August 2015.

II. National context

2. In the general elections held on 12 October 2014, Evo Morales Ayma was re-elected President of the Plurinational State of Bolivia for a third term, with 61.36 per cent of the votes. As a result of those elections, 49.78 per cent of the representatives in the new Legislative Assembly will be women (66 deputies, 16 senators and 5 supranational deputies).[1]

3. In June, a summit of heads of State and government of the Group of 77 and China on the theme "Towards a New World Order for Living Well", was held in Santa Cruz de la Sierra, Plurinational State of Bolivia, with the participation of 16 presidents, high-level representatives of 133 States and the Secretary-General of the United Nations. The participants adopted the Declaration of Santa Cruz, with a human rights focus on economic and social development, climate change, migration, women's rights, indigenous peoples' rights and cooperation. The Secretary-General also undertook a tour of the country on that occasion.

4. In October 2014, the General Assembly of the United Nations elected the Plurinational State of Bolivia to the Human Rights Council for a second term, for the period 2015-2017.

5. Also in October, the Plurinational State of Bolivia underwent its second-cycle examination by the Human Rights Council Working Group on the Universal Periodic Review. While it was generally recognized that the country had made progress in the field of human rights, 193 recommendations were made on economic, social and cultural rights, the administration of justice, gender-based violence and femicide, the prison system and child labour. The Plurinational State of Bolivia accepted 46 recommendations, rejected 15 and identified 132 as having been already implemented or as currently being implemented. OHCHR-Bolivia provided technical assistance to the State and to civil society in this process.

6. In recent years, the Plurinational State of Bolivia has demonstrated its commitment to human rights by ratifying numerous treaties and by submitting pending reports. Nevertheless, the High Commissioner urges it to better coordinate the drafting of the reports among the State institutions involved, to use statistical data, and to consider establishing a body for monitoring and implementing international recommendations.

[1] United Nations Development Programme and UN-Women, October 2014: "Bolivia: results of the general elections 2014 from a gender perspective".

III. Human rights situation

A. Economic, social and cultural rights

7. The High Commissioner considers that income-distribution programmes have led to progress in the enjoyment of social and economic rights and the fight against extreme poverty, primarily among the most vulnerable. These programmes benefit 38.3 per cent of the population.[2] They should continue focusing on reducing the inequality gaps among the population and promoting more complete inclusiveness.

1. Education

8. The Plurinational State of Bolivia is the second country in Latin America in terms of investment in education and culture, which amounts to 6.7 per cent of the gross national product.[3]

9. Until December 2014, the Juancito Pinto grant,[4] designed to promote school attendance, benefited 2,262,867 boys, girls and young people throughout the country. Its coverage was extended to include those in the sixth year of secondary school, as well as 8,500 students with disabilities.[5] A Certificate of Excellence in Baccalaureate-level Studies was established, whereby US$ 146[6] was awarded at the end of the 2014 school year to the two students in every school—a boy and a girl—with the highest average grade.

10. A programme offering 100 scholarships for international postgraduate study in areas considered strategic by the State was launched in 2014[7] for professionals and students at public and private universities, with an excellent academic record.

11. By July, under the "A computer for every teacher" project to promote the use of new technologies in education, 78,153 laptops had been distributed free of charge to all the teachers across the country. And under the "A computer for every student" programme,[8] a further 25,000 computers were distributed free of charge to primary and secondary school students to use for at school.

2. Health

12. Under the "My health" programme, which began in June 2013, to provide home medical services free of charge, work was carried out to expand, remodel and equip 40 health centres.[9] In addition, a community rehabilitation centre for persons with disabilities was set up in each department, which also offered services free of charge. Nevertheless, the High Commissioner notes weaknesses in the health system, particularly with regard to protocols for patient care, the lack of human resources and equipment and the absence of adequate budgetary allocations.

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[2] Ministry of the Economy and Public Finance 2013, http://medios.economiayfinanzas.gob.bo/MH/documentos/6.Pobl._benef.TCD.pdf.

[3] Ministry of Development Planning (General State Budget 2014).

[4] Source: *Cambio*, 23 October 2014. www.cambio.bo/sites/default/files/suplemetos/pdf/Especial%20Bono%20Juancito%20Pinto%2023-10-14.pdf. This programme managed to reduce the school dropout levels from 6 per cent in 2006 to 1.7 per cent in 2014.

[5] According to the 2012 census, the attendance rate at the national level is 83.3 per cent.

[6] Supreme Decree 1887 of 4 February 2014.

[7] Supreme Decree 2100, 1 September 2014.

[8] Report of the Plurinational State of Bolivia for the second cycle of the universal periodic review, paras. 75 and 76.

[9] So far in Chuquisaca, Oruro and Potosi departments.

3. Water, housing and basic services

13. By the end of 2013, clean water coverage was 81 per cent and sanitation 51.7 per cent.[10] There were, however, significant differences among the country's regions.[11]

14. The Vice-Ministry for Housing and City Planning carried out a programme offering loans with a 3 per cent interest rate to sectors of the population wishing to acquire State housing. Beneficiaries were chosen from persons whose income was less than that set out in the Financial Services Act.[12] As a result, more than 10,000 families have received housing loans.[13] The Law has also opened up greater access to private housing through lowering interest rates and through offering mortgage facilities.

15. The public electricity service "decent rate" (*tarifa dignidad*) in place since 2006, which offers a discount to low-income families, has reached around 900,000 beneficiaries a month across the country.

16. In December 2013, the Plurinational State of Bolivia launched the Túpac Katari satellite to provide equitable access to telecommunications, including the Internet, and telephone and television services throughout the country's nine departments, especially in rural areas. The satellite went into service in April 2014. Since September, 1,000 centres[14] have been constructed, mostly in isolated rural areas, providing Internet access, computers, satellite television and telephone services. Remote educational and medical services are also being developed to contribute to existing efforts in the provision of education and health in isolated areas.

4. The right to food

17. As a result of the implementation of policies led by the National Council of Food and Nutrition (CONAN)—an interministerial body aimed at promoting the right to adequate and sufficient food—the malnutrition rate dropped from 38 per cent in 1990-1992 to 19.5 per cent in 2012-2014.[15]

18. The multisectoral programme "Zero malnutrition", aimed at improving the overall health of children under 5 years of age, pregnant women and nursing mothers brought the chronic malnutrition rate down to 16 per cent in 2014.[16]

5. Human rights indicators

19. Since 2012, the Ministry of Justice and the National Institute of Statistics have been leading efforts to develop human rights indicators, with technical assistance from OHCHR-Bolivia. This process is to help the Plurinational State of Bolivia monitor the situation of human rights in the country and the impact of public policies, and the incorporation of statistical and quantitative information with a human rights-based approach into the State's reports to the international human rights mechanisms. Along with 25 State institutions, they have defined 400 indicators for six prioritized rights: food, education, health, work and

[10] Ministry of the Environment and Water. Coverage for 2014 will be calculated at the end of the year. As of December 2012, the Plurinational State of Bolivia exceeded the Millennium Development Goal on the right to water, two years before the deadline, thanks to the implementation of the "My Water" and "My Water II" programmes (see A/HRC/25/19/Add.2, para.31).

[11] Report of the Ombudsman to the second cycle of the universal periodic review.

[12] Law 393, 21 August 2013.

[13] Statement by the Vice-Minister for Pensions and Financial Services on 30 December 2014.

[14] La Paz 246; Potosi 232; Santa Cruz 133; Chuquisaca 116; Cochabamba 105; Beni 64; Tarija 53; Oruro 34; Pando 17.

[15] Food and Agriculture Organization of the United Nations. *The State of Food Security in the World 2014: Strengthening the enabling environment to improve food security and nutrition*, p. 20.

[16] Source: CONAN mid-term review 2012.

housing, and the right of women to a life free from violence. Comparative human rights information and statistical data are available over time for 65 per cent of the indicators. In 2014, priority was given to three further rights: access to potable water, a life free from trafficking, and access to justice and a fair trial.

6. National Plan of Action for Human Rights

20. In 2014 the Ministry of Justice coordinated the development of the new National Plan of Action for Human Rights for 2015-2020 with technical assistance from OHCHR-Bolivia, within the framework of the National Human Rights Council—a body comprising State institutions and civil society. The Plan gives priority to the rights highlighted in the Patriotic Agenda 2025,[17] to actions remaining from the 2009-2013 Plan and to recommendations from international human rights mechanisms. The plan includes six strategic areas: civil and political rights; economic, social and cultural rights; the rights of rural native peoples and nations; women's rights; the rights of people in vulnerable situations; and the management of rights (*gestión de derechos*). The Plurinational Human Rights Policy 2015-2020[18] was drawn up using the same methodology.

B. Women's rights

21. The adoption in 2013 of Comprehensive Law348 guaranteeing women a life free from violence, along with the promulgation of its implementing decree in 2014, mark a step forward in the fight against gender-based violence. Of particular note in the decree is the allocation of increased resources to certain bodies tasked with addressing gender-based violence, including the national police's Special Force against Violence (FELCV), and to departments for the construction of women's shelters. Nevertheless, the delay between the promulgation of the Law and the promulgation of its implementing decree has not facilitated implementation.

22. According to the Observatory of Violence against Women of the Women's Centre for Information and Development of Women (CIDEM), a non-governmental organization (NGO) specializing in the issue of violence against women, 105 femicides were documented between January and October 2014. Most were allegedly committed by partners or ex-partners of the victims. These figures differ from those presented by the FELCV for the same period, which registered 54 femicides. This difference may indicate the need to harmonize the criteria and methodology for addressing the application of the newly defined crime of femicide.

23. The High Commissioner is concerned at the high number of femicides, the long duration of investigations and the low number of prosecutions in 2014, despite the adoption of Act 348 in 2013.[19]

24. OHCHR-Bolivia followed up on one case of femicide which occurred in September in Achacachi, in which two army sergeants invited two 17-year-old girls who were doing their pre-military service[20] to drink some strong alcohol with them. Afterwards, the men reportedly drugged the girls, raped them and killed one of them. The sergeants were dismissed from their posts, arrested and detained on charges of femicide.

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[17] See A/HRC/25/19/Add.2, para. 2.

[18] At the end of 2014, both documents were pending approval by the National Human Rights Council.

[19] The Ministry of Communications reported that up to November 2014 only five sentences had been handed down.

[20] Supreme Decree No. 27057 calls on young people of both sexes to do their military service voluntarily when they are in the fifth year of secondary school.

25. The High Commissioner is also concerned about the alleged rape of a woman with disabilities which was committed by seven police officers in Cochabamba in July 2014, and the reported cover-up of the incident by some police authorities. The High Commissioner awaits the results of the investigation, as well as a strong response from the State in relation to this case.

26. In February 2014, the Constitutional Court issued a decision eliminating the requirement for judicial authorization for legal abortion services in cases of rape, sexual abuse during kidnapping, incest, and danger to the life or health of the mother.[21] The High Commissioner considers this to be a step forward for women's rights, in compliance with various special procedures' and treaty bodies' recommendations, as it reduces the legal obstacles that used to be faced by women in seeking legal abortion.

27. Under article 11 of the Electoral Procedure Law, the Supreme Electoral Court, guaranteed parity and the principle of alternation of male and female candidates for deputy and senator seats in the October 2014 elections, and required political parties to ensure that 50 per cent of their registered candidates were women. Whereas in 1982, 2 per cent of the country's legislators were women, they now constitute 49.78 per cent of parliamentarians (i.e. 66 deputies, 16 senators and 5 supranational deputies). The Plurinational State of Bolivia is the country with the second highest level of women's participation in parliament in the world, and the highest in the Americas.

28. The High Commissioner welcomes, in particular, the initiative by women magistrates of the high courts to publicly present in October 2014 a draft policy on gender equality in judicial institutions. This draft policy foresees the creation of a gender unit and a gender observatory. The women judges' steering committee decided to put in place some of the key monitoring instruments before their official adoption.

C. Indigenous peoples' rights

29. The rights of indigenous peoples remain high on the national agenda, and are becoming increasingly important at the municipal and departmental levels. In May 2014, President Morales submitted a bill to Parliament on prior, free and informed consultation. At the end of 2014, the bill remained under discussion in the Constitution and Legislation Commission of the Chamber of Deputies. The High Commissioner believes that its prompt adoption will afford the greatest protection possible for the collective rights of indigenous peoples.

30. Also in May 2014, the Mining and Metallurgy Law 535 came into effect, recognizing the right of indigenous peoples to have a share in the benefits of the exploitation of the resources in their lands, in conformity with the mining regulation on participation in benefits and with the application of the collective right to prior, free and informed consultation.[22] Nevertheless, the application of the Law is mandated only for new mining contracts and is limited to the exploitation phase, excluding consultation and consent for the prospecting and exploration phases. This exclusion fails to comply with international standards. The High Commissioner is of the opinion that the regulations under this Act, which could affect the interests of indigenous peoples, should be drawn up in consultation with the organizations that represent them.

31. The Constitutional Court confirmed as constitutional the autonomous-statute projects to convert the municipalities of Charagua, Totora Marka and Mojocoya into

[21] Constitutional Decision 0206/2014 eliminating the requirement of a judicial authorization for legal abortion services in case of rape, sexual abuse during kidnapping, incest, and danger to the life or health of the mother.

[22] Law 535 on Mining and Metallurgy, arts. 19 and 207-222.

autonomous indigenous areas. The status of nine other municipalities undergoing similar procedures remains pending. The National Coordinating Body of Indigenous Autonomous Areas requested that the Court speed up its analysis of their proposed autonomous status in view of the municipal elections planned for 2015. Although the autonomous status of three municipalities has been declared constitutional, the process has been quite slow, to the detriment of indigenous populations' exercising their autonomy.

32. In March, the Vice-Minister for Energy Development brokered agreements between those involved in the restitution of the collective rights of the Guaraní people in the Alto Parapetí territory. The organization representing them had denounced the oil company active on Guaraní lands for interference in their organizational structure. Such interference by oil-company employees in Guaraní affairs has been a source of constant complaint. In this context the technical and operational capacity of the Office of Socio-environmental Management within the Ministry for Hydrocarbons needs to be increased to enable it to carry out its functions properly, including the duty to protect the collective rights of the Guaraní people and to insist on and promote the business sector's obligation to respect human rights.

33. OHCHR-Bolivia has monitored the petitions submitted by the Yampara and Qhara Qhara indigenous organizations of Chuquisaca to obtain a favourable response to their requests to be considered as minorities and to be represented before the Legislative Departmental Assembly. In November 2014, the Assembly approved their request, in compliance with a resolution by the Constitutional Court. The High Commissioner is concerned about the lack of police protection provided to the Yampara and Qhara Qhara indigenous leaders during a vigil in June 2014, when they were victims of physical violence and discriminatory language and behaviour, including the destruction of symbols of indigenous authority, by some peasants from the area.

34. The High Commissioner welcomes the decision on 10 July by the Chuquisaca Departmental Court of Justice on 10 July 2014 to recognize the Quila Quila as an indigenous people.

35. With regard to the organizational status of the National Council of Ayllus and Markas of Qullasuyu (CONAMAQ), OHCHR-Bolivia publicly called on the authorities[23] to protect the collective rights of this organization and the indigenous peoples it represents. The High Commissioner is concerned about acts of violence against a group of leaders in the area outside the CONAMAQ offices carried out by another group of Council members in defiance of the procedures and peaceful mechanisms for resolving differences within the organization.

36. The investigation by the Public Prosecutor's Office into excessive use of force by the police during the 8th Indigenous March in September 2011, en Chaparina (Beni), described in previous reports,[24] is still continuing. The victims lodged a writ of protection against the April 2014 decision of the Public Prosecutor's Office to exclude a former government minister from the investigations.[25] The review court granted the victims' writ, asking the Public Prosecutor's Office to issue a new resolution. In July 2014, the Attorney's Office carried out a reconstruction of the events, which provided better insight what happened. Some of the victims claimed they could not participate in this judicial action.

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[23] OHCHR-Bolivia, press release of 6 January 2014.

[24] In 2012, for the first time (A/HCR/19/21/Add. 2, para. 21): "On 24 September, several marchers stopped the Foreign Minister, David Choquehuanca Céspedes, forcing him to cross the police barrier near the indigenous encampment and march with them against his will for some seven kilometres. A number of marchers and police were injured during this incident". See also the reports from 2013 (A/HRC/19/21/Add.2) and 2014 (A/HRC/25/19/Add.2).

[25] The penal investigation was opened in September 2011. In July 2012, the prosecution decided to exclude the minister from any further investigation. In February 2014, the decision was confirmed.

D. Racism and other forms of discrimination

37. The National Committee against Racism and All Forms of Discrimination, a consultative body with plural representation created in 2010 by Law 45, held only one of the two annual sessions foreseen in its regulations. During that session, it evaluated the implementation of the programmes on access to justice for and consultations with indigenous peoples under the Action Plan against Racism and All Forms of Discrimination. The Committee drew attention to the content of the draft law on prior, free and informed consultation, in particular the elements on full participation and advances towards coordination of the ordinary and indigenous justice systems. The Committee also approved a monitoring system for the implementation of the Action Plan. Nonetheless, the High Commissioner is concerned that the Plan has yet to be implemented in a coordinated manner by the executive branch, which has weakened the National Committee's enforcement capacities, as well as its leadership in that respect.

38. The Committee has resolved a complaint by Afro-Bolivian organizations regarding the stigmatization of their history of slavery in popular culture manifestations. It determined that traditional dance groups must eliminate all traces of racist, discriminatory or distorting content.[26]

39. By 31 October, the General Directorate against Racism and All Forms of Discrimination had registered 157 complaints, of which it accepted 137 relating to discrimination based on physical appearance, level of education, origin, gender or age, inter alia. The main institutions denounced are education centres, as well as some State and private institutions. Complaints in the education sector related to harassment, physical or psychological violence, and bullying.

40. The Vice-Ministry for Decolonization and the Ministry of Education took various actions to fight against discrimination in education, including meeting with directors of educational centres in all the departmental capitals. In La Paz, more than one thousand school directors of that department got together to review the application of Law 45, which calls for a revision of the regulations governing educational establishments.

E. Administration of justice and the fight against impunity

41. The main structural problems facing the administration of justice mentioned in past reports by the High Commissioner persisted and became more serious: low coverage, a large backlog of cases,[27] impunity, low public confidence in institutions of justice, lack of access to justice, long delays in the delivery of justice, lack of independence of the judiciary, and obvious incapacity to guarantee due process. The budget of judicial institutions[28] is insufficient.[29] Furthermore, the sector is vulnerable to corruption and political influence. At the beginning of the year, the judicial crisis deepened as a result of

[26] The Committee determined that the traditional dance associations must eliminate all racist, discriminatory or distorting content specifically from the dance of the "tundiquis" and / or "negritos". It recommended eliminating from the performance and execution of the dances attitudes, expressions or other content misrepresenting, mocking, ridiculing or recreating taunts or stereotypes about Afro-Bolivian people and culture.

[27] Only 47 per cent of the country's 339 municipalities have a judge, and 41 per cent a prosecutor. In all, 63 per cent (330,548) of proceedings begun – in all areas – have been left pending until the next court session. Judicial Council (2013), Public Prosecutor's Office (2014).

[28] Ministry of Justice, judicial organ, Constitutional Court, Public Prosecutor's Office, National Public Defender Service and the Magistrates' School.

[29] According to the Ministry of Economy, it is 0.5 per cent of the general budget.

the changes in the presidencies of the main judicial institutions,[30] and this provoked public discontent and statements by high-ranking authorities of the executive and legislative branches of government about the performance of the judicial authorities elected in 2011.[31] Discussion about the legal mechanisms to shorten their mandates began in the media.[32] The judicial reform, started almost five years ago, has so far not delivered the expected results to redress the persisting and deep structural problems relating to the administration of justice.

42. The High Commissioner welcomes in particular the creation, in January 2014, of the National Council for Strategic Development of the Bolivian Judicial System, made up of the Constitutional Court, the judiciary and the Public Prosecutor's Office. The Council has begun drafting a proposal for judicial reform, on the basis of the recently approved strategic plans of the institutions of justice.[33] The High Commissioner also welcomes the setting up of the Sectoral Justice Board, which brings together the above-mentioned institutions, the Ministry of Justice and international cooperation agencies. He recognizes the efforts of the institutions of justice and their international partners to implement projects and measures to consolidate judicial independence and transparency, as well as access to justice.

1. Judicial independence

43. The Chamber of Deputies suspended Constitutional Court judges Ligia Velásquez, Rosario Chánez and Gualberto Cusi as a result of criminal and administrative proceedings brought against them by the Legislative Assembly in accordance with Law 044,[34] for allegedly making unconstitutional and unlawful decisions, perversion of the course of justice and non-fulfilment of duty. At the initiative of the Government, Law 044 was amended by Law 612 on 3 December 2014, removing the criminal prosecution attributions and maintaining only the possibility to dismiss high judicial authorities for administrative reasons.

44. However, OHCHR-Bolivia noted that the manner in which the proceedings were conducted could constitute a violation of the right to due process and in particular the right to a complete defence for the accused.

45. With regard to the procedures for appointing judges, the High Commissioner highlights the efforts of the Council of the Judiciary to draft, in a participatory manner, the Judicial Career Rules approved in April 2014. The implementation of these rules will provide judges with stability of tenure and promote judicial independence.

2. Institutional transparency and judicial corruption

46. With regard to the effectiveness of the disciplinary regime for judges and justice officials,[35] in 2013 the disciplining judges received 1,878 complaints from throughout the

[30] In February 2014, the President of the Supreme Court of Justice and the President of the Constitutional Court resigned (one year before the end of their mandates). In April 2014, the President of the Agro-environmental Court resigned.

[31] See www.la-razon.com/index.php?_url=/nacional/Presidente-incorporamos-pollera-sobreros-Justicia_0_1996600397.html.

[32] See www.la-razon.com/nacional/seguridad_nacional/Legisladores-tantean-formulas-solucion-judicial_0_1997800247.html; http://www.eldiario.net/noticias/2014/2014_06/nt140629/politica.php?n=50&-morales-propone-referendums-para-cambiar-a-magistrados.

[33] Strategic Plan of the Public Prosecutor's Office 2014-2021 (Resolution FGE/RJGF/DAJ N°121/2014 of 30 May 2014); Prospective Plan of the Judicial Branch 2014-2017 (Agreement 265-A/2013 of 25 November 2014); Strategic Institutional Plan of the Constitutional Court 2012-2016 (Resolution TCP-SP-AD 002/2012 of 14 May 2012).

[34] Law 044/2010-2011 on the Prosecution of Senior State Officials.

[35] Source: Council of the Judiciary.

country, and the Disciplinary Office of the Council of the Judiciary conducted 384 proceedings (at the review stage). Annually, 65 per cent of the complaints received are processed, with the remaining 35 per cent being carried over to the next session. There is no computerized database of complaints, which makes monitoring difficult. During the first six months of 2014, the disciplinary courts issued 252 resolutions, declaring 52 per cent of the complaints unfounded and 37.4 per cent justified; 7.5 per cent were dismissed and 3.1 per cent were considered to have lapsed. [36]

47. In July 2014, the Ministry of Transparency and the Fight against Corruption, with the support of the United Nations Office on Drugs and Crime (UNODC), received a visit from a United Nations team to evaluate the implementation of the United Nations Convention against Corruption. In 2015, the team will present a report to the Implementation Review Group of the Convention. The High Commissioner acknowledges the Government's initiative and the positive results achieved by the Ministry, which has recovered over 100,000,000 dollars, sometimes even placing its own staff at risk.

3. Penal justice system

48. The High Commissioner remains concerned about the high rates of pretrial detention and the backlog of criminal cases.[37] In response to this situation, judicial institutions approved a series of short- and medium-term measures. The High Commissioner would like to draw attention to the 49.8 per cent increase in the 2014 budget of the Public Prosecutor's Office over 2013. This enabled the institution to increase its coverage from 23 per cent to 41 per cent of municipalities and to raise the number of forensic personnel from 54 to 61.

49. The Supreme Court of Justice and the Council of the Judiciary approved a plan to deal with the backlog in the penal system which foresees an increase in the number of penal judges in order to improve the effectiveness of the departmental courts. The Public Prosecutor's Office and the Council of the Judiciary approved a pilot programme of special units for suspects caught in flagrante delicto. These units cover four districts (La Paz, Cochabamba, Santa Cruz and Chuquisaca) and aim to process cases within 72 hours.

50. On 30 October 2014, Law 586 was adopted, with the aim of reducing the backlog of cases in the penal system by accelerating the processing of cases. The Law abolishes some norms of the Code of Criminal Procedure: for instance, it removes the institution of citizen judges, which the High Commissioner had considered a constitutional improvement with regard to the exercise of people's right to participation in the administration of justice.[38] While urging the swift reduction of the backlog of cases, the High Commissioner finds that this and other measures included in the law, such as the possibility for judges to financially sanction lawyers whose petitions have been rejected, could be discussed in the future in the context of judicial reform.

51. The High Commissioner is also concerned that the critical situation faced by the National Public Defender Service (SEPDEP). Over the past five years,[39] the State has not significantly increased the budget of this institution; yet, according to the latest figures available,[40] it only has 68 public defenders in urban areas and 15 in rural areas. Of these,

[36] According to the Council of the Judiciary, 44 sanctions were imposed on various civil servants: one Appeal Court judge, 16 judges, 19 Court clerks and 8 support staff.

[37] According to the Council of the Judiciary, in 2013, 78 per cent (132,515) of the proceedings begun at the instruction level were carried over to the next year, and the rate of pretrial detention is 82.09 per cent.

[38] Political Constitution of the State (2009), arts. 178 and 241.

[39] In 2014, the budget assigned by the State to SEPDEP was Bs. 6.9 million. The budget was increased to Bs. 14.2 million, with temporary funds from international partners (Swiss Agency for Development and Cooperation, and Danish International Development Agency).

[40] SEPDEP, 2014.

29 posts are financed by international cooperation partners. The Service estimates that it would need another 10 defenders to manage its caseload.[41]

4. Legal pluralism

52. The Supreme Court of Justice has begun drafting and validating a policy and protocol for coordinating the ordinary and the indigenous justice systems. The Vice-Ministry of Indigenous Justice drafted the public policy for the consolidation of indigenous justice. Both instruments will strengthen coordination between ordinary justice and rural native indigenous systems.

53. The High Commissioner welcomes the initiative of the Constitutional Court to create departmental and national bodies to coordinate with the rural indigenous, peoples and nations.[42] He commends the Vice-Ministry of Indigenous Justice on its support to indigenous authorities in the resolution of emblematic cases, and in gaining access to constitutional justice.

F. Emblematic cases

54. OHCHR-Bolivia continued to monitor certain emblematic cases, revealing considerable delays in the delivery of justice, which result in impunity.

1. The El Porvenir massacre case

55. On 11 September 2008, the passage of a group of indigenous people and rural workers headed for the city of Cobija was blocked at El Porvenir, Pando, by anti-government officials from the Pando Prefecture. This resulted in violence, leading to the deaths of 11 people,[43] with some 50 more injured.

56. In relation to this incident, criminal proceedings were initiated against the former Pando governor (Prefect), Leopoldo Fernández, several civil servants from the Prefecture and other followers. The case is at the oral hearings stage, with only five of the accused present. In 2014, witness statements, as well as documentary and material evidence, were presented, and the final defence statements and verdicts were expected. With more than six years having elapsed since the start of the investigation, the High Commissioner urges the judicial authorities to bring the case to a close.

2. Case of the alleged terrorist group dismantled in Santa Cruz

57. In April 2009, following a police operation at a hotel in Santa Cruz, three foreigners were killed and two detained. The case has been at the oral hearings stage since May 2012. Thirty-nine people have been indicted, but 17 of them are fugitives.

58. In September, the mother of an Irish citizen, Michael Dwyer, who was killed in the raid, visited the Plurinational State of Bolivia, where she met the Vice-Minister for Foreign Affairs and other authorities to request an investigation into the circumstances surrounding her son's death, which she claimed constituted an extrajudicial execution. In her 2010 report, the former High Commissioner for Human Rights urged that the allegations of

[41] From January to November 2014 the National Public Defender Service dealt with 17,406 cases.

[42] Act of inter-jurisdictional coordination between authorities of the indigenous original rural native justice system and the Plurinational Constitutional Court, 23 October 2014.

[43] Nine of the victims were indigenous peasants and students, while two others were followers of the Prefecture.

excessive use of force by the security forces be fully investigated in order to determine whether the level of force used was necessary, reasonable and proportionate.[44]

59. The Hungarian accused, Előd Toáso, once again requested an end to his pretrial detention. His request included a certified copy of opinion 63/2011 of the Working Group on Arbitrary Detention,[45] finding that his detention was arbitrary. On 23 July 2014, the tribunal again turned down his request, declining to comment on the Working Group's opinion. The appeals court confirmed this decision.

60. Among other issues, the High Commissioner is concerned at the slow pace of the trial. Even though there are many defendants and the subject matter is complex, it is important to remember that the right to due process includes the right to be tried within a reasonable time.

3. The case of the extortion network

61. In November 2012, the Government publicly announced the existence of an extortion network involving staff of the Ministry of Government, the Public Prosecutor's Office and the judiciary. They were alleged to have taken advantage of the arrest of a United States citizen, Jacob Ostreicher, on charges related to money laundering, by selling thousands of tons of rice that had been legally confiscated from him. Several people are currently in detention in relation to this case.

62. The High Commissioner is concerned about claims by the accused that, in the early morning of 10 April 2014, hooded men in civilian clothes entered their cells, threatened them, beat them up and destroyed documents. The General Director of Prisons stated that this was part of a routine search by the prison authorities. The High Commissioner points out that only police with proper identification may carry out searches. The following day, the detainees filed a habeas corpus action with the review court, which found that the search had been illegal.

4. Case of the violent racist events of May 2008 in Sucre

63. On 24 May 2008, around 60 indigenous people were subjected to violent attacks and humiliating and racist treatment in Sucre by some members of the opposition to the Government. The oral hearings in this case are currently under way in Padilla, 160 kilometres from Sucre, and are only being held twice a week. By 2013, the accused had filed 180 procedural motions, and hearings had been repeatedly suspended, causing further delays. In November 2014, the defence for the accused began presenting its evidence. The victims are frustrated by the long delays and resulting impunity. The High Commissioner is concerned that these long delays have so far prevented the victims from enjoying their right to justice, truth and reparation.

5. Case against the former President, Gonzalo Sánchez de Lozada for the tragic events of October 2003

64. In 2011, two members of former President Sánchez de Lozada's government and five members of his high command were sentenced for their responsibility for the events of October 2003 which left more than 60 dead and over 400 injured. After the events the former President fled to the United States of America with some members of his government. In July, the Plurinational State of Bolivia sent new extradition requests to the United States Department of State. The High Commissioner encourages the authorities to continue taking the necessary measures to conclude these proceedings.

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[44] A/HRC/13/26/Add.2, para. 113.

[45] A/HRC/WGAD/2011/63. Adopted on 22 November 2011. It was certified by the group's Secretary on 17 January 2014.

G. Right to life and physical integrity

1. Deaths in custody

65. OHCHR-Bolivia received reports of at least six alleged suicides in detention centres and police stations in La Paz. It followed up on the investigations into several of these cases in which the authorities did not act with due diligence and where there were no satisfactory results. The High Commissioner reiterates his concern that these deaths, all allegedly by hanging, were not prevented. It is important to point out that, in one case, the victim's hands were tied behind his back and, in another, the presumed suicide took place in a cell, in the presence of other detainees and within a few metres of the security guard.

2. Lynchings

66. OHCHR-Bolivia continued to record reports of lynchings. Between 1 January and 30 November 2014,[46] OHCHR registered 20 cases reported by police and media sources, in which 10 people, including 1 woman, died. This is a slight decrease from the previous year. However, the High Commissioner is concerned that lack of preventive measures, an insufficient police response and failure to investigate crimes, added to public demands for security, result in violent reactions which mostly go unpunished. The High Commissioner hopes that the initiative of the Vice-Ministry of Indigenous Justice to design a public policy to prevent and combat this phenomenon will be implemented in 2015.

H. Right to personal liberty, and the prison system

67. The High Commissioner is concerned that the rate of pretrial detention has not declined, despite governmental initiatives.[47] According to official data, 82.09 per cent of the over 14,570 people deprived of liberty have yet to be tried.[48] In addition to raising concerns about overcrowding, this situation does not allow for effective State monitoring and control of prisons; and as there are relatively few guards, detainees can create power groups among themselves.

68. In September 2014, violent incidents in El Abra prison in Cochabamba resulted in the deaths of four detainees, with 10 persons injured. This took place in the context of a struggle for internal control of the prison by the inmates, and extortion.[49] Investigations revealed that the prison director had allowed alcohol within the prison. He was dismissed from his post, and detained on charges of abuse and extortion committed in conjunction with one of the detainees who died during the disturbance.

69. In connection with the violent incidents of August 2013 in Palmasola prison—when a group of inmates attacked another group, also causing a fire in which 35 people died and more than 50 were injured—following brief trials, three inmates were sentenced to 30 years' imprisonment after pleading guilty to the charges. However, there has not been significant progress in the investigation of the role of the prison police and the persons in charge of security at the prison.

70. OHCHR-Bolivia followed up on the situation of three non-commissioned officers of the armed forces detained in military installations since July 2014, following protests over changes to the Organic Law of the Armed Forces. They are being prosecuted for rebellion, sedition and mutiny. Following reports that their conditions of detention were substandard,

[46] In 2013, between 1 January and 30 September, there were 37 cases.

[47] Such as the adoption of amnesty laws.

[48] General Director of Prisons, Technical Report DGRP/UP/15/2014, 12 September 2014.

[49] In the 2014 report, OHCHR had expressed its concern that inmates exercised control of prisons (A/HRC/25/19/Add.2, para. 77).

OHCHR noted that conditions had improved compared with how they were in the early days of the officers' incarceration. The High Commissioner reiterates that military courts must respect guarantees of due process when applying military justice. The State should continue promoting the comprehensive reform of the Organic Law in accordance with the Constitution and international human rights standards.

71. At the end of 2013, the Plurinational State of Bolivia promulgated Law474, establishing the Service for the Prevention of Torture. In 2014, an executive decree was issued outlining its structure, in compliance with the Opticnal Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The High Commissioner notes that, although this legislation meets the international commitments of the Plurinational State of Bolivia, especially with regard to recommendations of the Committee against Torture, the Service for the Prevention of Torture is under the jurisdiction of the Ministry of Justice rather than being autonomous, as required under the Convention.

I. The rights of victims of unconstitutional regimes

72. In December 2013, the Senate approved a draft law establishing a truth commission, and sent it to the Chamber of Deputies. In order to allow for more extensive consultations with civil society, the Chamber decided not to approve the text. The High Commissioner urges the authorities to continue consulting with civil-society and victims' organizations, with a view to adopting a law that provides for the investigation of all violations committed under the unconstitutional regimes from 1964 to 1982, and to comply with the right to truth, justice, reparation and non-recurrence.

J. Human rights defenders and freedom of expression

73. The High Commissioner is concerned about certain developments and situations affecting human rights defenders and human rights organizations. Personnel of the Institute of Therapy and Investigation into the After-effects of Torture and State Violence reported being subjected to intimidation and telephone threats and being followed by unknown individuals. The ongoing judicial investigation has not yet established the circumstances of the events, which occurred between November 2013 and January 2014. The Government stated that the victim had not presented any information statement.

74. In February 2014, tents belonging to the Platform of Social Combatants against Impunity, for Justice and for the Historical Memory of the Bolivian People, which were installed two years ago in a central area of La Paz as part of a protest, were destroyed by a fire. A fire brigade report attributed the fire to short-circuited wiring. The organization's leaders alleged that it was a criminal act aimed at stifling their protests.

75. With regard to the application of Supreme Decree No. 1597 regulating Law No. 351 on the granting of legal status, OHCHR-Bolivia has received reports from some non-governmental organizations about administrative slowness and delays in the accreditation process. This has generated a climate of uncertainty within many of these organizations.

76. Regarding freedom of information and the press, OHCHR-Bolivia followed up on a State report to the Public Prosecutor's Office denouncing a journalist of a national newspaper on charges of espionage and revealing State secrets, and against the newspaper's director for alleged complicity. The article was said to contain confidential information on a highly important State issue. A criminal court judge ordered the author to reveal the source of the information contained in the article. The Departmental Court of La Paz ordered that the case be sent to a special tribunal with jurisdiction over cases concerning the press and revoked the judicial order demanding that the source be revealed.

K. Rights of children and adolescents

77. In January 2014, the Government issued Supreme Decree No. 1875, lowering the minimum age for compulsory military service from 18 to 17. This contradicts the declaration made by Bolivia upon acceding to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in which it stated that the minimum age for compulsory military service is 18. Under the Optional Protocol, 17-year-old children cannot perform compulsory military service.

78. On 17 July, Law No. 548, the Children and Adolescents Code was adopted. This new principle of law is better adapted to the principle of comprehensive protection than the previous legislation. For example, it strengthens the prioritization of the adoption process, among other things.

79. The death in November 2014 of an eight-month-old baby who had not received timely medical care in a public shelter in La Paz shocked Bolivian society. The baby died from lacerations and internal bleeding, after a presumed act of sexual abuse. To date it is not known where or by whom the violence was carried out. The event highlighted failures in the child-protection system and the poor performance of the Public Prosecutor's Office in investigating the facts.

IV. Main activities of the office

80. In coordination with civil-society organizations, OHCHR-Bolivia held an international seminar on the "Impact of Constitutional Decision 0206/2014 in the area of sexual and reproductive rights", to analyse practical challenges and opportunities facing the health, justice and police sectors in relation to legal abortion.

81. OHCHR-Bolivia took part in a technical working group to revise the proposed protocol and road map for the care of victims of gender-based violence in the context of Law 348, with the aim of producing a comprehensive implementation document covering the strategic areas of care of victims, prosecution, sanctions, and reparation for the criminal acts proscribed by this Law.

82. Together with the International Labour Organization and the Guaraní Indigenous University, OHCHR-Bolivia organized a course on human rights and cultural expertise. In all, 26 Guaraní leaders received 600 hours of face-to-face training and received diplomas as cultural experts.

83. OHCHR-Bolivia carried out and published three participatory studies on decision-making systems among the Guaraní peoples of the Alto Parapetí territory, the Jach'a Karangas nation and the Mosetén people.

84. It also carried out 24 monitoring missions over 66 days to follow up on illustrative cases, the prison situation, human rights defenders, indigenous peoples' rights and the course of the October elections. In addition, eight training activities were held for representatives of indigenous groups and civil society.

85. OHCHR-Bolivia provided technical assistance for the proposed system for monitoring the implementation of the Action Plan against Racism. It also provided technical assistance to the National Committee against Racism and all Forms of Discrimination.

86. OHCHR-Bolivia and UN-Women introduced the Latin American Model Protocol for the Investigation of Gender-motivated Violent Deaths of Women (femicide).

87. Under the project "Strengthening and increasing the independence of the judicial system in Bolivia", financed by the European Commission, OHCHR-Bolivia provided technical assistance to the Judicial Council to draft the Judicial Service Rules.[50] The Rules cover the selection, evaluation and training of judges, as well as the monitoring of the implementation of the disciplinary regime for judges.

88. In coordination with other United Nations agencies, OHCHR-Bolivia assisted the schools for judges and prosecutors in incorporating human rights into the initial training curriculum for new judges and prosecutors.

89. OHCHR-Bolivia helped the Committee of Female Magistrates from the judicial body and the Constitutional Court to develop a draft policy on gender equality in judicial institutions and a plan of action for its implementation.

90. OHCHR-Bolivia assisted the Supreme Court of Justice in drafting and validating a policy and protocol for coordination with the indigenous jurisdiction. This included the development of guidelines for managing casework and systematizing jurisprudence. It also assisted the Public Prosecutor's Office in drafting a communications policy and the Constitutional Court in carrying out its second meeting with indigenous organizations.

91. Under the project financed by the European Commission, OHCHR-Bolivia organized 36 human rights training events, in which 2,721 justice officials from throughout the country participated. It also held 79 technical assistance workshops for justice institutions on the independence of the judiciary, access to justice, legal pluralism and international human rights standards, in which 2,268 persons participated.

V. Recommendations

92. **While reiterating previous recommendations, the United Nations High Commissioner for Human Rights makes the following recommendations:**

(a) That the institutions of the justice sector, in coordination with all other State bodies, draw up a comprehensive plan of judicial reform which sets out basic guidelines with short-, medium- and long-term measures to rectify its structural problems;

(b) That a policy on transparency and the fight against corruption in the justice system be drafted and implemented, in accordance with the national policy on the fight against corruption and with international human rights standards;

(c) That the judicial branch draw up a plan for the gradual implementation of judicial-career rules which reflects the merits and years of service of currently serving judges, so as to provide stability of tenure and promote judicial independence;

(d) That the State continue carrying out a thorough, independent and impartial investigation of the events surrounding the fire at Palmasola Prison, which led to the deaths of 35 people, and an investigation of the suspected officials who could have been responsible, by act or omission, for the fire; as well as similar investigations of the other cases mentioned in the present report;

(e) That the State bring prison conditions into line with international norms and ensure that the national police adhere to the protocols of detention, and safeguard the life and integrity of those deprived of liberty;

[50] Through agreement 79/2014 of 8 April 2014.

(f) That the Government increase its efforts to support the National Committee against Racism and All Forms of Discrimination, and provide it with sufficient financial resources;

(g) That the law on free, prior and informed consultation be promulgated and that the Government strengthen the Office of Socio-environmental Management of the Ministry for Hydrocarbons so that it act appropriately and in a timely manner in organizing consultations with indigenous peoples, and the protection of their collective rights;

(h) That the Government create a standing specialized interministerial coordination body for the drafting of State party reports and for following up on the implementation of the recommendations of international human rights mechanisms, including the universal periodic review, and for engaging in dialogue with civil society and the international community;

(i) That urgent measures be adopted to address gender-based violence and, in particular, that national, departmental and municipal authorities allocate the necessary resources for the establishment of comprehensive specialized courts and prosecution services, as well as for shelters for victims, under the framework of LawNo. 348;

(j) That the authorities conduct prompt, thorough, independent and impartial investigations into all instances of lynching, and that the Ministry of Justice, the Public Prosecutor's Office, the judicial branch, the national police, regional governments and mayors' offices implement a public policy to prevent and combat lynchings.